IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

PAUL R. WATKINS,)	
Plaintiff,)))	CASE NO. 3:12-0192 Chief Judge Haynes
V.)	
UNITED STATES POSTAL SERVICE, et al.,)	
Defendants.)	

ORDER

Plaintiff, Paul R. Watkins, filed this <u>pro se</u> action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e <u>et seq.</u>, against the Defendants: the United States Postal Services, Amy Hale, and Robert Widelock. Plaintiff asserts claims for an alleged wrongful discharge. Defendants Amy Hale and Robert Widelock were both federal employees at all times relevant to the instant complaint.

Before the Court is the Defendants motion to dismiss (Docket Entry 18) for Plaintiff's failure to name the proper defendant that under Title VII is fatal to Plaintiff's claim. According to the motion, Plaintiff was hired on August 27, 2011 subject to completion of a ninety (90) day probationary period. Plaintiff alleges he was terminated during his probationary period, but asserts that as veteran, he should have been afforded "progressive discipline." (Docket Entry No. 1, Complaint at ¶ 9). Plaintiff also alleges that his termination was also in retaliation for calling in sick. Id.

Plaintiff named as Defendants: the United States Postal Service and two individuals, Amy Hale and Robert Widelock. Yet, under Title VII, the only proper defendant in a federal

employment discrimination action is the head of the agency. 42 U.S.C. § 2000e-16(c). See also Handcock v. Egger, 848 F.2d 87 (6th Cir. 1988) (the statute's requirements for naming the proper party is mandatory, failing to name agency head warrants dismissed) and Mulhall v. Aschcroft, 287 F.3d 543, 550 (6th Cir. 2002) (naming a subunit of an agency as defendant instead of agency head improper and warrants dismissal). To date, Plaintiff has not responded to the motion.

Plaintiff has the burden of proving that proper jurisdiction does exist. <u>DLX, Inc. v.</u> Kentucky, 381 F.3d 511, 516 (6th Cir. 2004). Under Title VII, Plaintiff must name the head of the United States Postal Service and he failed to comply with Section 2000e-16(c).

Thus, the motion to dismiss (Docket Entry No. 18) filed by the United States Postal Service, Amy Hale and Robert Widelock is **GRANTED** and this action is **DISMISSED** with prejudice to the named Defendants, but without prejudice to the merits of Plaintiff's underlying claims.

It is so **ORDERED**.

ENTERED this the _______ day of September, 2012.

Chief United States District Judge